COURT DECISION CONFERS AMPLE POWER ON BOARD

Sanitation Measure Upheld in Broadest Possible Construction

The Supreme Court in its decision yesterday affirming the validity of the "revolving fund act," passed by the last legislature goes even further than is necessary to give the board of health power to enforce the filling of low-lying and insanitary lands. It lays down broad principles of the "police power" of the board.

The most important parts of the points in the decision were summarized in the Star-Bulletin yesterday. Following are quotations of interesting parts:

"The claim of the plaintiff that the statute, if enforced, would constitute a taking of his property for public use without making just compensation therefor, leads to a consideration, first, of the general nature and purposes of the statute, and next, of some of its provisions. The contention is made that the statute is wholly void because it provides for the assessment of the whole cost of the making of the improvement upon the land upon which the work is done, whereas, it is argued, the legislature, in providing for such schemes of reclamation under a statute such as that under review, cannot constitutionally authorize an assessment against a particular parcel of land in excess of the value of the special benefit accruing to that land, or its owner, by reason of the improvement made or contemplated. The force of such a contention will depend upon the character of the statute at which the argument may be directed.

"For example, the opening, grading and paving of public highways is essentially a function of government. The duty to grade or pave such a highway may not be imposed by law upon abutting owners, and, although such owners may legally be compelled to contribute to the cost of grading and paving the highway upon which their lands are situated, the amount of the enforced contribution, laid in the form of a special tax or assessment, cannot legally exceed the value of the special benefits which accrue to the abutting property as the result of the improvement. The foundation of the power to tax specially in such cases is the benefit the object of the tax confers on the owners of the abutting lots. The value of that benefit will mark the limit of the assessment. * * * But the statute in question does not involve the theory of special benefits accruing from a public improvement.

A Health Measure.

"This statute is a health measure as is sufficiently shown by the language of its first section. Proceedings under it commence with a finding by the board of health that certain land is deleterious to the public health or in an insanitary and dangerous condition. Land in an insanitary condition or otherwise deleterious to the public health through natural causes not contributed by man was not a nuisance at common law. Such a condition cannot be treated as a nuisance except by authority of the Legislature, in the interest of the public health and in the exercise of the police power, to impose upon the owner of land which has become or threatens to become a menace to health, through natural causes or by human agency, the duty of putting it in proper condition by the making of improvements which will render it sanitary.

"The statute in question does not expressly declare such to be the duty of owners of land of the character of that described, but the inference is unavoidable that it was enacted on the theory that the owner of such property owes a duty to the public which he may be required to perform, and that in case he has failed or refused to perform that duty a governmental agency may be authorized to do the work of improvement for him at his expense.

"We believe it to be well established that the legislature may impose or assume a duty on the part of property owners to do certain things with reference to their property for the protection of the public irrespective of whether the performance of such duty will financially benefit the owner, and provide that in case he fails to do the necessary thing, the public, through governmental instrumentality, may do what is necessary and assess the property upon which the work is done with the entire cost thereof without reference to the matter of benefits. This would not be the exercise of the power of eminent domain, for it would not constitute a taking of private property for public use. Neither would it be the exercise of the power of taxation, for the work required to be done would not properly be regarded as a public improvement, even though it would result in a benefit to the public. It would be the police power—the power to conserve the health and safety of the community that would be called into action.

Fact Known By All.

"'If there is any fact which may be supposed to be known by everybody, and, therefore, by the courts, it is that swamps and stagnant waters are the cause of malarial and malignant fevers and that the police power is never more legitimately exercised than in removing such nuisances.' Levoy v. United States, 177 U. S. 621, 636. The filling of low land upon which water collects and becomes stagnant so as to menace the health of the neighborhood falls within the principle referred to, and the duty to improve conditions may be enjoined upon the owner, and, if he fails to take action after proper notice, the municipality or other agency may be authorized to make such improvement as the circumstances may require and to assess the cost against the land. * * *

"We do not mean to say that swamp lands held in private ownership may not be reclaimed through the exercise of the power of taxation at the expense partly of the owners and partly at that of the public where the scheme constitutes a general public improvement and is not a mere matter of compelling land owners to abate nuisances or remedy insanitary conditions. In such cases, as in the matter of grading and paving streets, the limit of the assessment which may be imposed against the lands immediately benefited is the value of the special benefit conferred. The case of Tidewater Company v. Coster, 18 N. J. E. 518, upon which counsel for the plaintiff seem to place much reliance, was one involving the making of a public improvement. Many cases of the same class might be cited.

"We hold that the constitutional inhibition against the taking of private property for public use without just compensation is not violated by the provision of this statute authorizing the assessment of the whole cost of the improvement against the land improved."

TIRES MADE FROM WHISKEY

CHICAGO, Ill., Sept. 22.—Emperor William of Germany rides in an automobile, the tires of which are made from whiskey, according to Dr. H. A. Bernson, head of the chemistry department of Heidelberg university, who with 300 other scientists, is in Chicago to attend the eighth annual international congress of applied chemistry.

He says that rubber has been made from whiskey for several years at several experimental laboratories in Germany, and recently a set of automobile tires made from the alcohol beverage were presented to Emperor William and that he is now using them on one of his private automobiles.

According to Dr. Berson, the process of manufacturing is quite intricate. By special processes of fermentation the scientists increase the amount of fusel oil in whiskey, then extract the oil and use it in place of the raw gum that is tapped from rubber trees.